

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

FILED
10/11/2019 12:30 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL

CHICAGO PUBLIC MEDIA,)
BETTER GOVERNMENT ASSOCIATION,)
Plaintiffs,)
v.) 2019CH11787
VILLAGE OF LYONS,)
Defendant.)

COMPLAINT

NOW COME Plaintiffs, CHICAGO PUBLIC MEDIA and BETTER GOVERNMENT ASSOCIATION, by the undersigned attorneys, LOEVY & LOEVY, and bring this suit to overturn Defendant VILLAGE OF LYONS's refusal, in willful violation of the Illinois Freedom of Information Act, to comply with Freedom of Information Act requests for federal subpoenas and search warrants, citing no exemptions, and in violation of the plain text of the statute and binding case law. In support of the Complaint, CHICAGO PUBLIC MEDIA and BETTER GOVERNMENT ASSOCIATION state as follows:

INTRODUCTION

1. Pursuant to the fundamental philosophy of the American constitutional form of government, it is the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of the Illinois Freedom of Information Act ("FOIA"). 5 ILCS 140/1.

2. Restraints on access to information, to the extent permitted by FOIA, are limited exceptions to the principle that the people of this state have a right to full disclosure of

information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of the people. 5 ILCS 140/1.

3. Under FOIA Section 1.2, “[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.” 5 ILCS 140/1.2.

4. Under FOIA Section 11(h), “except as to causes the court considers to be of greater importance, proceedings arising under [FOIA] shall take precedence on the docket over all other causes and be assigned for hearing and trial at the earliest practicable date and expedited in every way.” 5 ILCS 140/11(h).

PARTIES

5. Plaintiff CHICAGO PUBLIC MEDIA (“CPM”) is a FOIA requester in this case. CPM serves the public interest by creating and delivering diverse, compelling content that informs, inspires, enriches and entertains. Through a broad range of media platforms—such as the nonprofit radio station WBEZ 91.5fm—it connects diverse audiences in its service area and beyond to one another. It helps them make a difference in our communities, our region, and our world.

6. Plaintiff BETTER GOVERNMENT ASSOCIATION (“BGA”) is a FOIA requester in this case. BGA is a non-partisan, non-profit corporation located in Cook County, Illinois. BGA’s mission is to promote integrity, transparency, and accountability in government by exposing waste, fraud, and corruption; to advocate for effective public policy; and to inform and engage the community. BGA was founded in 1923 to protect the integrity of the political process in Chicago.

7. Defendant VILLAGE OF LYONS is a public body located in Cook County, Illinois.

SEPTEMBER 26, 2019 FOIA REQUEST (CPM)

8. On September 26, 2019, CPM submitted a FOIA request to VILLAGE OF LYONS for “[a]ny and all subpoenas, search warrants or other requests for information to the village of Lyons from federal investigative agencies, including but not limited to the FBI or the U.S. Attorney’s Office for the Northern District of Illinois, since Jan. 1, 2017” and “[a]ny and all search warrant returns or other documents that federal agents have given to the Village of Lyons documenting the records or items that the agents removed pursuant to a search warrant executed since Jan. 1, 2017.” Exhibit A.

9. After taking an extension of time to respond, on October 10, 2019, through its attorneys and citing no FOIA exemptions, VILLAGE OF LYONS denied the request in its entirety claiming that “[t]he Government has requested the Village of Lyons provide *no information* concerning this matter.” (Emphasis in original.) Exhibit B.

SEPTEMBER 26, 2019 FOIA REQUEST (BGA)

10. On September 26, 2019, BGA submitted a FOIA request to VILLAGE OF LYONS for “[a]ny and all subpoenas, search warrants, court files, investigative files, and all other documentation from the U.S. District Attorney’s Office or the Federal Bureau of Investigation received by the Village or any of its agents, officials, employees, or representatives since Sept. 18, 2019.” Exhibit C.

11. After taking an extension of time to respond, on October 10, 2019, through its attorneys and citing no FOIA exemptions, VILLAGE OF LYONS denied the request in its

entirety claiming that “[t]he Government has requested the Village of Lyons provide *no information* concerning this matter.” (Emphasis in original.) Exhibit D.

COUNT I - FAILURE TO PRODUCE RECORDS (CPM)

12. The above paragraphs are incorporated by reference.
13. VILLAGE OF LYONS is a public body under FOIA.
14. The records sought in CPM’s FOIA request are non-exempt public records of VILLAGE OF LYONS.
15. VILLAGE OF LYONS willfully violated FOIA by failing to produce the requested records.

COUNT II – FAILURE TO PRODUCE RECORDS (BGA)

16. The above paragraphs are incorporated by reference.
17. VILLAGE OF LYONS is a public body under FOIA.
18. The records sought in CPM’s FOIA request are non-exempt public records of VILLAGE OF LYONS.
19. VILLAGE OF LYONS willfully violated FOIA by failing to produce the requested records.

WHEREFORE, Plaintiffs ask that the Court:

- i. in accordance with FOIA Section 11(f), afford this case precedence on the Court’s docket except as to causes the Court considers to be of greater importance, assign this case for hearing and trial at the earliest practicable date, and expedite this case in every way;
- ii. declare that VILLAGE OF LYONS has violated FOIA;
- iii. order VILLAGE OF LYONS to produce the requested records;

- iv. enjoin VILLAGE OF LYONS from withholding non-exempt public records under FOIA;
- v. order VILLAGE OF LYONS to pay civil penalties;
- vi. award Plaintiffs reasonable attorneys' fees and costs;
- vii. award such other relief the Court considers appropriate.

Dated: October 11, 2019

RESPECTFULLY SUBMITTED,

/s/ Matthew V. Topic

Attorneys for Plaintiffs

Matthew Topic
Joshua Burday
Merrick Wayne
LOEVY & LOEVY
311 North Aberdeen, 3rd Floor
Chicago, IL 60607
312-243-5900
foia@loevy.com
Attorney No. 41295

Dan Mihalopoulos

From: Dan Mihalopoulos
Sent: Monday, October 07, 2019 12:05 PM
To: tsheahan@villageoflyons-il.net
Cc: Matt Topic
Subject: Fw: WBEZ FOIA request

Mr. Sheahan,

I sent this request to you more than 5 business days ago. Please advise me immediately if you received this request because we sent it to the email given on the village website and have not received the response that is required by the law by now. If you have any questions, please call my cell 312-404-8670.

Sincerely,
Dan

From: Dan Mihalopoulos
Sent: Thursday, September 26, 2019 1:28 PM
To: tsheahan@villageoflyons-il.net
Subject: WBEZ FOIA request

Tom Sheahan
FOIA Officer
Village of Lyons
E-mail: tsheahan@villageoflyons-il.net

To Whom It May Concern:

This is a request for public information under the Illinois Freedom of Information Act.

Please provide copies of the following documents:

* Any and all subpoenas, search warrants or other requests for information to the Village of Lyons from federal investigative agencies, including but not limited to the FBI or the U.S. Attorney's Office for the Northern District of Illinois, since Jan. 1, 2017.

* Any and all search warrant returns or other documents that federal agents have given to the Village of Lyons documenting the records or items that the agents removed pursuant to any search warrant executed since Jan. 1, 2017.

We look forward to receiving your response within five business days.

If you have any questions about this request, please call me at cell 312-404-8670 or message me at dmihalopoulos@wbez.org.

Sincerely,
Dan Mihalopoulos

Reporter
WBEZ-Chicago Public Media

Dan Mihalopoulos

From: Dan Mihalopoulos
Sent: Thursday, October 10, 2019 5:05 PM
To: Thomas Sheahan; mtburns@bbp-chicago.com
Cc: Doreen Norris; Matt Topic
Subject: RE: Attached Image

Marty, thanks for your call the other day. Is the Village planning to send that information yet today? Best, Dan

From: Dan Mihalopoulos
Sent: Monday, October 07, 2019 3:09 PM
To: Thomas Sheahan <tsheahan@villageoflyons-il.net>; mtburns@bbp-chicago.com
Cc: Doreen Norris <dnorris@villageoflyons-il.net>; Matt Topic <matt@loevy.com>
Subject: Re: Attached Image

The request is limited in scope and substantially similar, if not identical, to the other media requests, so I am at a loss to understand why the Village of Lyons would request an extension beyond Thursday, which will mark 10 business days since my original request was filed at the appropriate email address. Given that other media have made essentially the same request, and they made their requests at virtually the same time I did, if not later than Sept. 24, I am not granting an extension beyond Thursday.

From: Thomas Sheahan <tsheahan@villageoflyons-il.net>
Sent: Monday, October 7, 2019 2:19 PM
To: Dan Mihalopoulos; mtburns@bbp-chicago.com
Cc: Thomas Sheahan; Doreen Norris
Subject: FW: Attached Image

Marty,

This must have slipped through the cracks as we were inundated with FOIAS. I've asked Dan for an extension. Please handle. TS

From: Canon@villageoflyons-il.net [mailto:Canon@villageoflyons-il.net]
Sent: Monday, October 07, 2019 1:57 PM
To: Thomas Sheahan
Subject: Attached Image

From: "Martin T. Burns" <mtburns@bbp-chicago.com>
Date: October 10, 2019 at 6:50:00 PM CDT
To: 'Dan Mihalopoulos' <dmihalopoulos@wbez.org>
Cc: "tsheahan@villageoflyons-il.net" <tsheahan@villageoflyons-il.net>
Subject: FOIA/Village of Lyons

Dear Mr. Mihalopoulos:

This firm represents the Village of Lyons (the "Village") on certain assigned matters. On behalf of the Village, I am writing to provide a response to your September 26, 2019, e-mail request for certain public records pursuant to the Illinois Freedom of Information Act (the "Act").

In response to your request, the Village FOIA Officer has provided a written statement which is attached hereto.

Should you disagree and wish to appeal the Village's response, you may appeal to: Public Access Counselor, Office of the Attorney General, 500 South 2nd Street, Springfield, IL 62706, Fax: 217-782-1396, e-mail: publicaccess@atg.state.il.us. You may also seek judicial review under Section 11 of the Act.

If you have any further questions, please don't hesitate to call.

Martin T. Burns
Burke Burns & Pinelli, Ltd.
70 West Madison Street
Suite 4300
Chicago, Illinois 60602
Tel: (312) 541-8600
Fax:(312) 541-8603
Email: mtburns@bbp-chicago.com
Website: www.bbp-chicago.com

Exhibit B

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2 attachments

 **ATT00001.htm**
1K

 **FOIA Statement 10 10 19.pdf**
15K

You have requested information concerning a subpoena served on the Village of Lyons.

The Village of Lyons is cooperating completely in any Government Investigation.

The Government has requested The Village of Lyons provide **No Information** concerning this matter.

VILLAGE OF LYONS
F.O.I.A. OFFICER

----- Forwarded message -----

From: **Casey Toner** <ctoner@bettergov.org>

Date: Thu, Sep 26, 2019, 2:24 PM

Subject: FOIA request

To: Thomas Sheahan <tsheahan@villageoflyons-il.net>

Cc: Susan D. Steffy <ssteffy@bbp-chicago.com>, Martin T. Burns <mtburns@bbp-chicago.com>, <attyburt@odelsonsterk.com>

Dear FOIA officer,

This is Casey Toner with the Better Government Association with a request for public records under the Illinois Freedom of Information Act. I am asking for copies of the following:

+Any and all subpoenas, search warrants, court files, investigative files and all other documentation from the U.S. District Attorney's Office or the Federal Bureau of Investigation received by the Village or any of its agents, officials, employees or representatives since Sept. 18, 2019.

Please make these records available for my inspection under state law before 3 p.m. Oct. 3, 2019, as required by state law. If you have any questions or concerns regarding this request, please call me at (312) 386-9201 or my cell phone at (773) 957-2068. Thank you for your prompt attention to this matter.

Thank you,

--
Casey Toner
Better Government Association reporter
Office: (312) 386-9201
Cell: (773) 957-2068

----- Forwarded message -----

From: **Martin T. Burns** <mtburns@bbp-chicago.com>
Date: Thu, Oct 10, 2019, 6:50 PM
Subject: FOIA/Village of Lyons
To: Casey Toner <ctoner@bettergov.org>
Cc: tsheahan@villageoflyons-il.net <tsheahan@villageoflyons-il.net>

Dear Mr. Toner:

This firm represents the Village of Lyons (the "Village") on certain assigned matters. On behalf of the Village, I am writing to provide a response to your September 26, 2019, e-mail request for certain public records pursuant to the Illinois Freedom of Information Act (the "Act").

In response to your request, the Village FOIA Officer has provided a written statement which is attached hereto.

Should you disagree and wish to appeal the Village's response, you may appeal to: Public Access Counselor, Office of the Attorney General, 500 South 2nd Street, Springfield, IL 62706, Fax: 217-782-1396, e-mail: publicaccess@atg.state.il.us. You may also seek judicial review under Section 11 of the Act.

If you have any further questions, please don't hesitate to call.

Martin T. Burns
Burke Burns & Pinelli, Ltd.
70 West Madison Street
Suite 4300
Chicago, Illinois 60602
Tel: (312) 541-8600
Fax: (312) 541-8603
Email: mtburns@bbp-chicago.com
Website: www.bbp-chicago.com

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Exhibit D

 **FOIA Statement 10 10 19.pdf**
15K

You have requested information concerning a subpoena served on the Village of Lyons.

The Village of Lyons is cooperating completely in any Government Investigation.

The Government has requested The Village of Lyons provide **No Information** concerning this matter.

VILLAGE OF LYONS
F.O.I.A. OFFICER